2 December 2013

Contribution of the Netherlands to the discussion on the future development of the JHA cooperation

Following the first exchange of views during the informal meeting of the JHA Council in July, the Member States are invited by the Presidency to send in their respective national contributions . The Netherlands is very grateful for this possibility and would like to seize this opportunity to further express its views on the direction in which we believe JHA policy should develop from 2015 onwards. Maximising added value to citizens, businesses and the implementing organisations is an important starting point.

The Netherlands contribution has to be considered as a **supplement** to **the common guiding principles**, which recently have been **presented by Estonia, Finland Germany, Hungary, Slovenia, Sweden, the United Kingdom and the Netherlands**. Furthermore, this contribution has to be considered in addition to the paper on the political priorities for the future development of the JHA area in the field of asylum, migration, visa and borders, as presented by Austria, Belgium, Denmark, Sweden and the Netherlands and supported by France and Germany.

As set out in the joint position regarding the common guiding principles , it is essential that the future JHA policy framework:

- is based on actual **needs** and **evaluation of the effectiveness of existing measures**;
- gives priority to **quality**, **consolidation** and **implementation**;
- is **effective**, **cost efficient** and supports **growth**;
- makes good use of the available **resources**;
- is based on the respect for European **values** and **fundamental rights**, and
- strengthens the coherence between the **internal and external dimension**.

Cooperation in a number of JHA fields is very valuable, and it is important to take this cooperation forward, depending on the social and economic context and needs in practice. **Subject to the** aforementioned **guiding principles**, special emphasis has to be put on the **following topics** in the process leading to the adoption of a new programme.

I. Justice:

Eliminating gaps in cooperation in criminal matters

The EU should focus on finding and eliminating any gaps that may exist in cooperation in criminal matters, thus strengthening cooperation in the interest of successful prosecutions in cross-border cases of serious crimes. Law on criminal procedures and substantive criminal law are primarily a matter for the Member States. The principle of mutual recognition is the cornerstone of judicial cooperation in the EU. It is essential to strengthen the system of mutual recognition by enhancing mutual trust. Special focus should be placed on the implementation of the road-map on procedural rights. In addition, it must be ensured that the existing instruments of mutual recognition work in practice and that they are evaluated as a whole. Regarding criminal procedures, new legislation at EU level should only be considered when practical experience shows that EU-level rules are needed. Every measure should be of good quality and user-friendly, and their effective enforcement should be ensured.

Approximation of definitions of criminal offences and sanctions in the Member States is merely justified when it comes to serious crime with a cross-border dimension. Common principles that steer the EU criminal law policy should be agreed upon. Such principles should include subsidiarity, proportionality, respecting the individual Member States' penal systems as regard the determination of the levels of sanctions, article 83 TFEU as exclusive legal basis for substantive criminal law, and should entail that it is not justified to enact EU legislation regarding minimum sanctions.

Implementation of instruments for victims

In recent years, two EU directives and an EU regulation have been adopted for the support and protection of victims, which have to be implemented by the Member States in 2015. For the trust of victims in the authorities in general and the criminal justice system in particular, it is of the utmost importance that what has been agreed is implemented. The Netherlands’ objective is therefore to ensure that the legislation is properly implemented and respected. Promoting information exchange en sharing knowledge an best practices stimulates and strengthens cooperation in implementing legislation. Closer cooperation between Member States at different levels is necessary in order to improve the support, protection and compensation offered to victims in cross-border cases.

Room for administrative enforcement

In many cases, sanctions carried out under administrative law represent a good alternative to enforcement by means of criminal law. However, because of the differences in enforcement systems between Member States, cross-border enforcement of sanctions administered via the administrative route may in some cases cause problems. This is an area where comprehensive analysis could be useful in order to share best practices and knowledge, as well as to ensure consistency of EU legislation in all policy fields. The question is whether there may be a need for (more) cross-border cooperation in this field.

Effective instruments for settling cross-border disputes

Civil law is an area where enhancing the knowledge of the existing instruments among the legal practitioners should be at the center of attention. Focus should also be on measures that are based on the actual needs of citizens, consumers and SMEs. The aim is to simplify and facilitate cross-border activities and enhance access to justice. The process of abolishing unnecessary intermediate measures, such as exequatur, should continue where appropriate, when revising existing instruments.

Several instruments concerning the civil procedure have been created in the EU. However, the practical application of these instruments would be facilitated and enhanced, if they were mutually consistent and based on similar solutions that steer the practical work. EU instruments concerning cross-border civil procedure should be made more explicit and more uniform.

All action in this policy area must respect the legal basis that limits EU action to cross-border matters. It is also necessary to ensure that possible EU instruments do not overlap and complicate the legal framework already set by more global solutions, adopted for instance in the Hague Conference on Private International Law.

Rule of law

Our European community of values requires constant upkeep. The Netherlands, together with other Member States, has continuously worked to establish an additional mechanism that would make it possible to examine developments concerning the rule of law in a broad sense in the Member States and to discuss such matters in a dialogue between Member States.

The Commission will issue a communication on a rule-of-law mechanism. According to the Commission, the mechanism will be based on the principle that Member States are treated equally and that national sovereignty is not constrained.[1] The Netherlands is looking forward to receiving the Commission's proposals and will continue to play an active and constructive role in the discussion. In addition, several Member States, including the Netherlands, and the EU Fundamental Rights Agency (FRA) are working on a project that involves identifying data and monitoring procedures that already exist for a number of rule-of-law themes. As one of the countries spearheading this project, the Netherlands supports these developments, emphasizes their importance and their continuous future development. Next to stressing the importance of these developments, the Netherlands strives to prevent any increase of administrative burden or unnecessary institutional duplication due to new initiatives or mechanisms.

II. <u>Home affairs</u>

A comprehensive approach of cyber security

Cyberspace has economic and social advantages, but also provides opportunities for criminal and harmful state sponsored activities. Therefore, a comprehensive approach which includes the various relevant aspects (security, freedom, justice and social-economic development) is needed, alongside strong public-private partnerships. Member States should share expertise and ensure Computer Emergency Response capacities as well as develop and implement standards. The EU can play a stimulating role in cyber crisis management within the European Union based on capabilities in the Member States and in research and development. Furthermore, international cooperation regarding prevention, investigation and prosecution of cyber crime needs to be enhanced. The establishment of the Europol Cybercrime Centre (EC3) is vital in enabling Member States to quickly and effectively exchange information between law enforcement authorities to fight cybercrime.

Attention has also to be drawn to the broader problem of the use of the internet for criminal purposes. The use of the internet as an instrument for facilitating criminal activities is universally present. Europol and the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) indicated last January that the internet is facilitating illicit drug trafficking, human trafficking and many other criminal activities.[1] The increasing use of the internet for criminal purposes therefore necessitates a structural, cross-border approach. Encouraging international cooperation in specific investigation activities as well as in intelligence sharing is crucial.

[1] State of the Union, European Commission President José Manuel Barroso, 11 September 2013.

[1] Europol and EMCDDA, *EU Drug Markets report | a strategic analysis (2013)*, pp. 118-119.

Fight against organized crime

The EU, Member States, and their authorities must be well positioned to combat organized crime effectively. The EU Serious and Organized Crime Threat Assessment provides an adequate threat analysis and should continue to be used as a leading source of information and prioritization. It is vital for the success of this instrument that the European Commission and the Member States support the implementation of the EU policy cycle and subsequently the execution of the EMPACT (European Multidisciplinary Platforms against Criminal Threats) projects. In the fight against organized crime financial investigations and the confiscation of criminal assets should be a priority. Focus should also be on fight against corruption. Operational and legal problems hindering effective cooperation between Member States on this approach should be assessed and solved.

Law enforcement and criminal law on their own do not provide enough scope to combat organized crime. Strengthening the administrative approach against organized crime is crucial in this respect. Cooperation and exchange of information between, for example tax authorities, administrative and licensing authorities and law enforcement authorities, shall make it possible to fight the criminal (activities) in the most effective way.

Enhancement of the quality of information exchange

Effective and secure cross border exchange of information is a precondition to achieve the goals of internal security in the European Union. To that end it might be useful to explore the possibility of introducing a single point of operational contact (SPOC). To ensure a high quality of information exchange between law enforcement authorities, the potential of the existing instruments, such as the Prüm decisions, should be fully utilized and implemented by all Member States. The operational consequences of the use of the various instruments for information exchange, for instance the follow up after a “hit”, should be taken into account.

Where possible a uniform European IT architecture should be developed in particular concerning biometric data. In order to enhance the information exchange between Member States, Member States and the European Commission jointly should further explore, in the framework of the Information Management Strategy, how the information from the various systems in the Member States can be used in a standardized format and on an automated and interoperable basis, taking into account data protection and fundamental rights.

Reliability of forensic processes and quality of evidence

With a view to effective law enforcement and combating crime, it is important that certain essential processes are reliable and comparable in all Member States. This also holds for the collection, processing, and use of forensic data. Applying common forensic-scientific (minimum) quality standards will increase mutual trust and thereby contribute to police and judicial cooperation between Member States. It is therefor important to implement the Council Conclusions of 13-14 December 2011 for the creation of a European Forensic Science Area in 2020.[2]

[2] Council Conclusions on the vision for European Forensic Science 2020 including the creation of a European Forensic Science Area and the development of forensic science infrastructure in Europe, doc. no. 17537/11.

Prevention and resilience in civil protection

Prevention and resilience are key in the area of civil protection. These national responsibilities are aimed at decreasing probability, impact and costs of disasters. As a basis, a good insight in and a comparison of national risk-assessments is essential. The EU can merge national assessments and act as an information broker for Member States with comparable risks. These Members States can cooperate to reduce these risks and create a more resilient society (government, civilians as well as critical infrastructure). Meanwhile, the UN Hyogo Framework for Action, EU and NATO-priorities have to taken into account and the doubling of priorities has to be prevented.

The following paragraphs should be read as supplement to the paper on the political priorities for the future development of the JHA area in the field of asylum, migration, visa and borders, as presented by Austria, Belgium, Denmark, Sweden and the Netherlands and supported by France and Germany.

Consolidating the common asylum policy and intensifying EU return policy .

Further convergence of asylum policy and practices in member states should be pursued thereby creating a genuinely European system in which asylum seekers are assured of the same treatment with the same outcome in all Member States. This will include further study, for example through pilot projects, of forms of joint processing in the EU.

While further strengthening the common European asylum system (CEAS), a study should be conducted to the long term cost-effectiveness of the current CEAS compared to other alternatives. The Netherlands is of the opinion that asylum seekers should as much as possible be accommodated and receive protection in the region of origin.

An effective return policy is also essential if asylum policy is to function properly. This will require a greater effort on the part of the EU. The Netherlands advocates that cooperation with countries of origin, including in non-JHA areas, is dependent in part on cooperation in respect of return. To achieve this, an integrated, whole-of-government approach to policymaking is necessary at both national and EU level.

Management of traveller flows at the external borders and monitoring intra-EU secondary migration flows

The traveller flows at the EU's external borders must be managed in a modern and effective manner. The entry of those who bring benefit to the EU should be facilitated in order for the EU to remain an attractive destination by modernising and aligning border and visa procedures for low-risk travellers. This way the EU enhances its attractiveness, reduce administrative burden and at the same time a more targeted approach to enhance security and tackle illegal immigration can be achieved. This will also be its aim in respect of the establishment of a European Registered Traveller Programme (RTP) and a European Entry/Exit System (EES) as part of the Smart Borders package. These systems should be designed in such a way that they can be used not only for border checks but also for monitoring purposes, carrying out returns and combating crime.

Owing to the absence of controls at the internal borders it is necessary for the sake of effective monitoring to obtain more information about intra-EU secondary migration flows. This requires closer cooperation and the exchange of information between the different agencies, organisations

and services at national, regional and EU level. The Netherlands also wishes to achieve greater uniformity in monitoring and enforcement in the EU, more intelligence-driven action and better use of the existing ICT- and registration systems so that Member States can anticipate these secondary migration flows more efficiently and effectively.

Safeguarding the right to free movement of persons by preventing fraud and abuse of this right

The free movement of persons in the EU is one of the key achievements of European integration. In order to maintain popular support for the right to free movement, we need to address possible negative effects thereof. This requires, besides national measures, more cooperation on EU-level. This EU-cooperation should includes the fight against abuse and fraud of the right to free movement, the prevention of exploitation of mobile EU citizens and the prevention of displacement of national labour supply by unfair competition on working conditions.

Generic integration policy for both third-country nationals and EU citizens

Migrants themselves are primarily responsible for their integration into society, although at the same time integration requires a mutual effort in which the receiving society allows migrants some latitude, accepts them as equals and gives them equal opportunities. No specific integration policy should be pursued, instead the subject of integration should receive attention within generic policy fields such as security, education and employment. To be able to implement this policy effectively, the relevant EU rules have to be amended.

Identity

Weaknesses in the mechanisms for the creation, registration, use and verification of people's identities can have far-reaching consequences. Identity fraud and identity chain management for example touch upon the quality of information exchange for the purpose of the investigation and prosecution of criminal offenses, border management, (illegal) migration, the provision of services online, and the issuing and verification of breeder- and identity documents. The Netherlands therefore advocates cooperation at EU level in order to prevent and combat identity fraud and enhance the quality of identity management, for example by means of the exchange of information and expertise.

III. The external dimension of JHA

A better coherence between internal and external actions in the JHA area is needed. Strengthened coordination between various actors, EU Member States, EU institutions and agencies, would provide a more effective approach of the common challenges and result in better resource- and cost-effectiveness. The external dimension of JHA policies and actions has significant possibilities for providing a more effective environment for economic growth in the EU and its partners, building on openness, cooperation and stability. The Union must intensify its efforts in multilateral, international cooperation.

Operative cooperation with third countries in terms of internal security should be developed by strengthening further activities aimed at combating organised and transnational crime, notably by agreeing on common strategic objectives and priorities for practical cooperation.